



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
GREAT LAKES NATIONAL PROGRAM OFFICE  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590



APR 20 2012

SE-5J

**GENERAL NOTICE LETTER**  
**URGENT LEGAL MATTER**  
**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Gariup Construction Company, Inc.  
c/o David A. Buls, Esq.  
Woodward Buls Blaskovich & King, LLP.  
9223 Broadway  
Merrillville, Indiana 46410

**Re:** General Notice for the Gary Development Landfill Site in Gary, Indiana

**CERLIS ID#:** IND077005916

Dear Mr. Buls:

Under the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, (CERCLA), commonly known as the federal "Superfund" law, the U.S. Environmental Protection Agency (EPA) is responsible for responding to the release or threat of release of hazardous substances, pollutants or contaminants into the environment – that is, for stopping further contamination from occurring and for cleaning up or otherwise addressing any contamination that has already occurred. EPA has documented that such a release has occurred at the Gary Development Landfill Site (the Site) located in Gary, Indiana. Based on information presently available to EPA, EPA has determined that Gariup Construction Company, Inc. (GCC) may be responsible under CERCLA for cleanup of the Site or costs EPA has incurred in cleaning up the Site.

**Explanation of Potential Liability**

Under CERCLA, specifically Sections 106(a) and 107(a), Potentially Responsible Parties (PRPs) may be required to perform cleanup actions to protect the public health, welfare or the environment. Under Section 107(a) of CERCLA, PRPs may be held liable for all costs EPA incurs in responding to any release or threatened release of hazardous substances at the Site, unless the PRP can show divisibility or any of the other statutory defenses. PRPs include current and former owners and operators of the Site, persons who arranged for treatment and/or disposal of any hazardous substances found at the Site, and persons who accepted hazardous substances for transport and selected the site to which the hazardous substances were delivered.



Based on the information collected, EPA believes that GCC may be liable under Section 107(a) of CERCLA with respect to the Gary Development Landfill Site as an arranger, who by contract or agreement, arranged for the disposal, treatment or transportation of hazardous substances at the Site.

To date, EPA and the State of Indiana have taken several response actions at the Site under the authority of the Superfund Program. Below is a brief description of the actions taken at the Site.

- A Preliminary Assessment ("PA") and Site Investigation ("SI") in order to gain a basic understanding of any risks posed to human health and/or the environment by releases or threatened releases from the Site which was completed on October 9, 1991.
- Removal Actions to reduce immediate threat to the environment or human health posed by the Site were completed on September 27, 2002.
- An Expanded Site Inspection was completed on November 18, 2009.

Additional information about EPA's activities related to the Site is available at:  
<http://www.epa.gov/region5/cleanup/garylndfill/index.html>

#### *De Minimis Settlements*

Under CERCLA § 122(g) of CERCLA, whenever practicable and in the public interest, EPA may offer special settlements "to parties whose waste contribution to a site is minimal in volume and toxicity, that is, *de minimis* parties." Individuals or businesses resolving their Superfund liability as *de minimis* parties are not typically required to perform site cleanup. Instead, EPA requires *de minimis* settlers to pay their fair share of cleanup costs incurred, plus a "premium" that accounts for, among other things, uncertainties associated with the costs of work to be performed in the future. In return, *de minimis* settlers receive: (1) a covenant not to sue, which is a promise that EPA will not bring any future legal action against the settling party for the specific matters addressed in the settlement; and (2) contribution protection, which provides a settling party with protection from being sued by other responsible parties for the specific matters addressed in the settlement. Participation in a *de minimis* settlement means that GCC is settling directly with EPA as soon as it is possible to do so.

If GCC believes that it may be eligible for a *de minimis* settlement at this Site, please contact Nicole Wood-Chi, Associate Regional Counsel, at (312) 886-0664.

### **Resources and Information for Small Businesses**

As GCC may be aware, on January 11, 2002, President Bush signed into law the Superfund Small Business Liability Relief and Brownfields Revitalization Act. This Act contains several exemptions and defenses to CERCLA liability, which we suggest that all parties evaluate. GCC may obtain a copy of the law via the Internet at <http://www.epa.gov/swerosps/bf/sblrbra.htm> and review EPA guidance regarding these exemptions at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>.

In addition, if GCC is a "service station dealer" who accepts used oil for recycling, it may qualify for an exemption from liability under Section 114(c) of CERCLA. EPA guidance regarding this exemption can be found on the Internet at <http://www.epa.gov/compliance/resources/policies/cleanup/superfund>. If GCC believes it may qualify for the exemption, please contact either Nicole Wood-Chi, Associate Regional Counsel (312) 886-0664 or David Linneer, Remedial Project Manager (312) 886-1841 to request an application/information request specifically designed for service station dealers.

EPA has created a number of helpful resources for small businesses. EPA has established the National Compliance Assistance Clearinghouse as well as Compliance Assistance Centers which offer various forms of resources to small businesses. GCC may inquire about these resources at [www.epa.gov](http://www.epa.gov). In addition, EPA's Small Business Ombudsman may be contacted at [www.epa.gov/sbo](http://www.epa.gov/sbo). Finally, EPA developed a fact sheet about the Small Business Regulatory Enforcement Fairness Act ("SBREFA"), which is enclosed with this letter.

### **Financial Concerns/Ability to Pay Settlements**

EPA is aware that the financial ability of some PRPs to contribute toward the payment of response costs at a site may be substantially limited. If GCC believes, and can document that it falls within that category, please contact Nicole Wood-Chi, Associate Regional Counsel, at (312) 886-0664 for information on "Ability to Pay Settlements." In response, GCC will receive a package of information about the potential for such settlements and a form to fill out with information about the finances, and GCC will be asked to submit financial records including federal income tax returns. Also, please note that, because EPA has a potential claim against GCC, it must include EPA as a creditor if it files for bankruptcy.

### **Information to Assist GCC**

EPA would like to encourage communication between GCC, other PRPs and EPA at the Site. EPA recommends that all PRPs meet to select a "steering committee" that will be responsible for representing the group's interests. Establishing a manageable group is critical to successful negotiations with EPA. If this is not possible, EPA encourages each PRP to select one person from its company or organization to represent its interests to EPA.

To assist GCC in its efforts to communicate, please find the following enclosed information:

1. A list of names and addresses of PRPs to whom this letter is being sent.
2. A fact sheet that describes the Site.

EPA has established an Administrative Record that contains documents that serve as the basis for EPA's selection of a cleanup action for the Site. The Administrative Record is located at Gary Public Library, 220 West 4th Avenue, Gary, Indiana, and it is available to GCC and the public for inspection and comment. The Administrative Record is also available for inspection and comment at the Superfund Records Center, on the Seventh Floor at EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

EPA invites GCC to participate in formal negotiations with EPA to reach settlement providing for the PRPs, including GCC, to conduct or finance the response activities required at the Site.

Send your response to this notice of potential liability to:

Deena Sheppard, Enforcement Specialist  
Environmental Protection Agency – Region 5  
Superfund Division (SE-5J)  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3590

Please give this matter immediate attention and consider consulting an attorney. If GCC has any questions regarding this letter, please contact Nicole Wood-Chi, Associate Regional Counsel, at (312) 886-0664. Thank you for prompt attention to this matter.

Sincerely,



Sharon Jaffess, Chief  
Enforcement and Compliance Assurance Branch

Enclosures

- A. List of PRPs
- B. Site Fact Sheet
- C. Small Business Regulatory Enforcement Fairness Act Fact Sheet

cc: Gariup Construction Company, Inc.

GARY DEVELOPMENT LANDFILL  
U.S. EPA SUPERFUND SITE: (ID# INDO77005916)  
GENERAL NOTICE PRP LIST AS OF APRIL 2012

1. Alcatel-Lucent USA Inc.  
c/o Andrew C. Brought  
Spencer Fane Britt & Brown LLP  
1000 Walnut Street, Suite 1400  
Kansas City, Missouri 64106-2140

Alcatel-Lucent USA Inc.  
c/o G. John Galasso, P.E.  
Environmental Engineering Manager  
600-700 Mountain Avenue  
Murray Hill, NJ 07974

2. American Chemical Service, Inc.  
P.O. Box 190  
420 S. Colfax Avenue  
Griffith, Indiana 46319

3. Borg Warner Transmission Systems, Inc.  
c/o Schiff Hardin, LLP  
Attn: Joshua More  
233 South Wacker Drive, Suite 6600  
Chicago, Illinois 60606

Borg Warner Transmissions Systems Inc.  
Attn: Richard Painter  
700 South 25th Avenue  
Bellwood, Illinois 60104

4. BP America, Inc.  
Attn: Douglas S. Reinhart  
Senior Counsel  
BP Legal  
150 W. Warrenville Road, Mail Code 200-1W  
Naperville, Illinois 60563

BP America, Inc.  
Cynthia Kezos  
Strategy Manager  
Remediation Management  
4 Centerpointe Drive  
La Palma, California 90623

GARY DEVELOPMENT LANDFILL  
U.S. EPA SUPERFUND SITE: (ID# INDO77005916)  
GENERAL NOTICE PRP LIST AS OF APRIL 2012

5. Brandenburg Industrial Services Company  
Thomas J. Little, President  
2625 S. Loomis St.  
Chicago, Illinois 60608
6. Waste Management  
formerly Calumet Waste Systems, Inc.  
Attn: Francis Chin  
1001 Fannin, Ste 4000  
Houston, Texas 77002
7. Clark Material Handling, Inc.  
524 W Chicago Ave  
East Chicago, Indiana 46312
8. Gariup Construction Company, Inc.  
c/o David A. Buls, Esq.  
Woodward Buls Blaskovich & King, LLP.  
9223 Broadway  
Merrillville, Indiana 46410  
  
Gariup Construction Company, Inc  
3965 Harrison St.  
Gary, Indiana 46408-2653
9. Georgia-Pacific LLC  
ATTN: John C. Bottini  
Senior Counsel - Environmental  
133 Peachtree Street, N.E., 43<sup>rd</sup> Floor  
Atlanta, Georgia 30303
10. Independent Waste Systems  
1520 Blaine Street  
Gary, IN 46406
11. Industrial Disposal Company  
Aka Industrial Disposal Corp.  
1423 S. Jackson St.  
Louisville, KY 40208
12. Tyco International  
on behalf of Ansul, Inc.  
Attn: Joseph L. Schohn  
9 Roszel Road  
Princeton, New Jersey 08540-6205

GARY DEVELOPMENT LANDFILL  
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13. Republic Services, Inc.  
c/o Thomas A. Ryan  
Lathrop & Gage, LLP  
2345 Grand Boulevard, Suite 2200  
Kansas City, Missouri 64108-2618

Republic Services, Inc.  
18500 N. Allied Way  
Phoenix, Arizona 85054

14. Midwest Disposal, Inc.  
c/o Swanson, Martin & Bell, LLP  
Attn: Elizabeth S. Harvey  
330 North Wabash, Suite 3300  
Chicago, IL 60611

Midwest Disposal, Inc.  
Attn: Michael Bobruk, President  
6514 East 109<sup>th</sup> Avenue  
Crown Point, Indiana 46307

Created by: Deena Sheppard 4/11/12

## Enclosure 1

### SITE BACKGROUND

The Gary Development Landfill (GDL) is located at 479 N. Cline Avenue, Gary, Lake County, Indiana. The Gary Development Landfill can be found on the U.S.G.S. Highland, Indiana Quadrangle Topographic Map and in the southwest corner of section 35 in Township 37 North, Range 9 West. The Gary Development Landfill lies adjacent to the Grand Calumet River about 500 feet west of the Gary Airport south of Lake Michigan.

The facility is bounded to the north and east by E & J Railroad, to the south by the Grand Calumet River, and to the west by AMG (AKA Vulcan Materials). Wetland areas, which have been contaminated by the GDL operations, are present on the southeastern portion of the property. The Gary Development Landfill property consists of 62 total acres, of which approximately 55 acres were utilized for solid and hazardous waste disposal. The Gary Development Landfill is comprised of three (3) parcels.

The Gary Development Landfill Site consists of the landfill where hazardous substances had been deposited and a release of lead, chromium, zinc, acenaphthene, anthracene, benzo(a)anthracene, benzo(a)pyrene, benzo(b)fluoranthene, benzo(g,h,i)perylene, benzo(k)fluoranthene, chrysene, dibenzofuran, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene, phenanthrene, and pyrene were detected in the wetland.

In early 1973, the operator of the landfill began to explore developing a sanitary landfill in a mined-out, water-filled, sand pit. On May 15, 1973, the Indiana Stream Pollution Control Board (SPCB) approved the operator's proposal to dewater the sand pit. On June 19, 1973, SPCB granted the operator's construction permit SW133, allowing preparatory construction work for a sanitary landfill to begin. On August 29, 1974, the State conducted its final inspection of the Gary Development Landfill, which led to SPCB's granting final approval to the operator to commence sanitary landfill operation. The landfill began accepting solid waste for disposal in September, 1974. On February 20, 1975, SPCB sent the operator its operating permit.

In April, May, and August of 1976, the operator of the landfill was found to have discharged leachate into the Grand Calumet River without a National Pollution Discharge Elimination System (NPDES) permit. Lab analysis of leachate samples taken on August 27, 1976 indicated that significant amounts of heavy metals and oils were being pumped into the Grand Calumet River. In 1979 an Agreed Order was filed with the operator to address leachate concerns.

Inspections conducted by the Indiana State Board of Health found that areas around the working area did not have adequate cover and that fly ash was being used as cover. Other inspections conducted by the Indiana State Board of Health noted that leachate and contaminated water discharged into the Grand Calumet River without an NPDES permit and that fly ash was used as a cover for the landfill. As a result of the inspection findings, the operator was found not in compliance with its construction and operating permit. A Recommended Order regarding the findings was issued on February 16, 1983.

A review of Indiana Department of Environmental Management (IDEM) records showed that uncontrolled and untreated drainage was allowed to discharge (via pumping or by run-off) directly into the Calumet River when the landfill was active. The operator was instructed to maintain a pond to control drainage. Inspections conducted in 1984 and 1990 revealed that the operator installed a culvert/drainage pipe under the access road to discharge drainage from the facility. No NPDES permit was obtained for the discharge.

In 1985, the operator was notified to submit paperwork to operate a hazardous waste facility and submit proof of financial assurance. In 1986, EPA issued an administrative complaint and compliance order, which alleged that Gary Development Landfill accepted hazardous waste for disposal at their landfill which neither achieved interim status under RCRA, nor obtained a RCRA permit. Gary Development's appeal of this order was dismissed as untimely in August 1996. Landfill operations ceased in 1989.

An inspection of the Gary Development Landfill was conducted on February 18, 1992 and noted numerous violations of the Indiana Administrative Code and Federal Land Disposal Restrictions. On January 30, 1995, other violations were noted. An inspection conducted by EPA in 1996 also revealed that the landfill material had been pushed into the wooded wetland area adjacent to the Grand Calumet River.

In August 1996, after negotiations regarding the 1986 complaint and compliance order, a consent decree was issued requiring Gary Development to pay fines. The monies in the trust fund were used for the purpose of performing closure and post-closure care of the landfill, and conducting a ground water quality assessment program. In addition, the monies were to be used for remediation of contamination and/or prevention of releases of hazardous substances at the facility. Current cost estimates for assessments, cover and vegetation, erosion control measures, groundwater monitoring wells, gas system installation-flares, drain and fill ponds, capping, and other work exceed the amount in the trust fund. Due to a lack of monies to adequately address closure and post-closure activities at the facility, in 1997, EPA deferred the facility to CERCLA. In 2001, the landfill was given a Not-Under-Control status.

During a periodic inspection, IDEM staff identified several abandoned drums at the Gary Development Landfill on January 8, 2002. As a result, EPA conducted a Time-Critical Removal Action at the Gary Development Landfill. Numerous containers of various substances (oils, paint, insecticides, antifreeze, and electrical capacitors) were removed from the property.

On April 20, 2005, staff from IDEM conducted a Reassessment at the Gary Development Landfill. Groundwater and wetland sediment samples were collected. Elevated levels of metals, semi-volatile organic compounds, and pesticides were detected in the wetland samples.

On May 5, 2009, IDEM conducted an Expanded Site Inspection at the Gary Development Landfill. Once again, elevated levels greater than three (3) times background of metals, semi-volatile organic compounds, and pesticides were detected in the adjacent wetland samples.

In May 2011, EPA proposed to add the Site to the National Priorities List (NPL). The Site was finalized on the NPL on September 16, 2011.

The industrial / sanitary landfill was operated from 1975 to 1989. The landfill accepted hazardous substances including volatile organic compounds, semi-volatile organic compounds, heavy metals, and pesticides. The landfill ceased accepting waste materials in 1989. Not all that was deposited into the landfill is known because the operator did not have a detailed waste analysis plan on file for waste it accepted.

The landfill was not properly lined and there is no maintained, engineered cover, and no functioning and maintained run-on control system or runoff management system. The absence of these systems allows hazardous substances to migrate from the landfill into the adjacent wetland located at the south east corner of the landfill. Contamination from the landfill could also be leaking into the wetland via ground water.

While the landfill was active, IDEM inspectors noted that landfill material had been pushed into the same wetland mentioned above. The operator did not have permission to perform this action which may have released contaminants into the wetland. The inspectors also noticed several point source discharges of storm water runoff, creating rills and gullies, leaving the property's southern boundary into the Grand Calumet River where the wetland is located. The runoff was visibly laden with sediment and caused a discoloration of the Grand Calumet River along the facility boundary.